



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 26, 2018

CASE NUMBER: 2018OPA-0107

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

**EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 and Named Employee #2 may have used excessive force against the subject. OPA additionally alleged that Named Employee #3 may have failed to report an allegation of excessive force.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.200 - Using Force 1. Use of Force: When Authorized***

On January 30, 2018, OPA received a complaint from the subject’s Reverend – referred to herein as the Complainant. The Complainant told OPA that he was informed that the subject may have been subjected to excessive force by Seattle Police officers. OPA initiated this case and determined that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were involved in the arrest of the subject and that, during this arrest, they used force on him. During its intake investigation, OPA also classified an allegation against the officers’ supervisor, Named Employee #3 (NE#3). The substance of that allegation, which is discussed more fully below, was that NE#3 may have failed to refer the subject’s claim of excessive force to OPA as required by policy.



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With regard to the arrest of the subject, OPA's investigation yielded the following information. On January 28, 2018, a security guard called 911 to report that a vehicle was parked in a handicapped spot after hours and that the security guard could not rouse the two occupants therein and, thus, could not get them to move their vehicle. NE#1 and NE#2 responded to the scene. When they arrived, they met with the security guard who conveyed the same information to them. At the time, the vehicle was running with its headlights activated. The security guard told the officers that the vehicle had been parked and running for hours.

The officers tried to get the attention of both individuals, but were initially unsuccessful. NE#1 tried to open the front door to make contact with the subject, but it was locked. NE#2 was able to open the passenger door and, when he did so, he reported that smoke smelling of marijuana emanated from the vehicle. While the subject ultimately was roused, the passenger remained unresponsive. The subject rolled down his window and began to speak with NE#1. NE#1 told the subject why the officers were making contact with him and raised both that the subject was trespassing and that he was parked illegally in a handicapped spot. In response to NE#1's questions, the subject stated that he did not have identification with him, that he was not in possession of a driver's license, and that he did not have a last name. Based on his responses, demeanor, and the slurring of his words, the officers reported believing that the subject was under the influence. NE#1 ordered the subject to get out of the vehicle.

At that time, the vehicle moved forward. It appeared from a review of the Body Worn Video (BWV) that the subject purposefully put the vehicle in either drive or neutral. When he did so, NE#2 was partially inside of the vehicle and began getting pulled forward. Both officers ordered the subject to stop and, after operating the vehicle for several seconds, he did so. The officers then told the subject to get out of the car and he did not immediately comply. Eventually, the subject got out and, as described by NE#1, "began spinning out of his jacket he was currently wearing" and "began running" southbound in an attempt to flee. NE#1 reported that he caught up to the subject, again ordered him to the ground, and that he grabbed the subject's torso and right arm. NE#1 described that the subject then fell to the ground with NE#1 falling on top of him. NE#1 attempted to handcuff the subject in the prone position (with the subject lying on his stomach and NE#1 placing weight on his back to control his body) and NE#2 came over to assist. The subject continued to move his body around and prevented himself from being handcuffed. The officers held him down and argued with him to stop resisting. He ultimately did so and the handcuffs were applied. The subject was then lifted off of the ground and he noticed that he had injuries to his face. He complained of pain and the officers summoned both medical assistance and a supervisor.

The other occupant of the car eventually woke up and was allowed to leave the scene. As discussed below, NE#3 arrived and reviewed both the arrest and the force used. The subject again complained of pain from his injuries to NE#3. The subject's vehicle was impounded and searched pursuant to a warrant. Drugs and a firearm were found inside. Those items were photographed and inventoried.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*) These three factors and my conclusions as to each are outlined below.



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At the outset, I note that this incident was captured, virtually in its entirety, by the officers' BWV. Based on my review, I conclude that the video is consistent with NE#1's and NE#2's accounts of the incident and the force they reported using. I note that OPA was unable to interview the subject and this was raised as a concern by the OPA Auditor. However, given the conclusive nature of the video, the substance of that interview would not have impacted my analysis concerning the permissibility of the force.

With regard to the first element of the policy, I find that the force was reasonable. At the time NE#1 ordered the subject to get out of the car, he had a lawful basis to place him under arrest for multiple possible crimes, including potential DUI and failure to have his driver's license on his person. At that point, NE#1 would have been entitled to use force, if warranted under the circumstances, to do so. When the subject attempted to drive his vehicle from the scene, at a time when NE#1 was right next to the front door and NE#2 was still inside, he committed further criminal acts. Most notably, he potentially committed or, at the very least, attempted felony assault on the officers. After the officers were able to stop the vehicle, the subject got out and attempted to evade capture. NE#1 grabbed him and, in doing so, both he and the subject fell to the ground. Notably, NE#1 did not use any other significant force other than that needed to control the subject's body while he was on the ground and to place him into handcuffs. Neither NE#1 nor NE#2 ever struck, punched, or kicked the subject. When applying the factors set forth in SPD Policy 8.200(1) – including but not limited to: the seriousness of the crime (attempted assault); the resistance by the subject; the threat of harm to the officers; the attempts of the subject to escape; and the potential danger to others – they virtually all support a finding of reasonableness.

I further find that the force was necessary. At the time NE#1 took the subject down to the ground, the subject had already attempted to drive away and was fleeing on foot. I conclude that NE#1 did not perceive there to be any reasonable alternative to grabbing onto the subject and that this force resulted in both of them falling to the ground. Moreover, I find that this force was reasonable to effect the lawful purpose of preventing the subject from escaping and taking him into custody.

Lastly, I conclude that the force was proportional to the threat posed to the officers. I note that only that force necessary to take the subject into custody was used and, once custody was effectuated, the officers modulated their force. Importantly, the officers never struck, punched, or kicked the subject. That the subject suffered injuries to his face and elbows was certainly unfortunate. However, I do not find that the force was excessive.

For these reasons, I recommend that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #1**  
***8.200 - Using Force 1. Use of Force: When Authorized***

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



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**Named Employee #3 - Allegation #1**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

NE#3 was the supervisor at the scene. He interviewed NE#1 and NE#2 and also interviewed the subject. At that time, the Complainant had several lacerations and bleeding to his face. He also had other injuries to both elbows. Photographs of these injuries are attached to OPA's case file. The subject further stated to NE#3 that he was "thrown" from the car and "fucked up" by the officers.

NE#3 did not construe the Complainant to be making an allegation of excessive force and, accordingly, did not make an OPA referral. He explained that he did not believe that the Complainant's statements rose to the level of excessive force. He provided the following reasoning: "His, his injuries were – that I could see – when, when paired with the, the interview that I did with [NE#2] and [NE#1] and with [the subject], there, there were no, his injuries were consistent with being on the ground and writhing around."

SPD Policy 5.002-POL-5 requires Department supervisors to investigate or refer allegations of policy violations depending on the severity of the violation. Minor misconduct can be investigated by the supervisor; however, serious misconduct, as defined within the policy, must be referred to OPA. (SPD Policy 5.002-POL-5.) Included as serious misconduct are allegations of "unnecessary, unreasonable, or disproportionate use of force." (*Id.*)

Based on the totality of the circumstances, and applying a preponderance of the evidence standard, I find that the Complainant made an allegation of excessive force and that NE#3's failure to refer that allegation to OPA violated policy. I reach this finding due to both the nature of his complaints ("my whole body hurts, bro. You guys fucked me up bro" and "they threw me on the ground and fucked me up") and his injuries – particularly those to his face – and bleeding. I further note that, in his review, the East Precinct Captain reached a similar conclusion and stated the following: "An OPA complaint was filed based on the verbal statement made by the suspect that the officer 'fucked me up' and while not a direct claim of excessive force it is reasonable to believe that is what the suspect was implying."

Moreover, from OPA's analysis of NE#3's use of force review, he failed to provide any explanation or analysis for why he did not perceive the Complainant to be making an excessive force allegation. OPA's expectation, which has been communicated to the chain of command, is that supervisors will either refer cases like these as misconduct, or, where the supervisor believes in good faith that no allegation of excessive force has been made, the supervisor clearly and thoroughly explains that rationale. Here, NE#3 failed to do so.

That being said, I believe that a Training Referral, rather than a Sustained finding, is the appropriate result for several reasons. First, as he stated at his OPA interview, NE#3 had been an Acting Sergeant since only February 2017 and a hard-bar Sergeant for just a short time prior to the incident. Second, NE#3 stated that he had never conducted an investigation into an allegation of excessive force and had never had anyone report excessive force to him during his short time as a supervisor. Third, aside for failing to fully explain why he believed that the Complainant did not make an excessive force claim, the Type II force investigation he conducted was otherwise comprehensive. I hope that NE#3 learns from this incident and evaluates similar incidents more critically in the future. If not, and without any mitigating factors, the likely result will be a recommended Sustained finding.



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- **Training Referral:** NE#3 should be retrained as to SPD Policies 8.200, 8.400, and 5.002. He should be counseled to evaluate similar cases more critically in the future and to strive to identify excessive force allegations when appropriate. NE#3 should also be instructed that, even where he reasonably believes that an allegation does not rise to the level of excessive force and where it is a close call, he should fully explain his reasoning for not referring the case to OPA in his force review.

Recommended Finding: **Not Sustained (Training Referral)**